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10/526,320	02/25/2005	Beverly Cusick Taylor	PGW-100A	3559
28304	7590	07/20/2010		
JEAN M. MACHELEDT 501 SKYSAIL LANE SUITE B100 FORT COLLINS, CO 80525-3133			EXAMINER NGUYEN, CAMTU TRAN	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/526,320	Applicant(s) TAYLOR, BEVERLY CUSICK	
	Examiner Camtu T. Nguyen	Art Unit 3772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 May 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 and 20-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 2-4, 6-8 and 14 is/are allowed.
- 6) ☒ Claim(s) 1, 4, 5, 9-13 and 20-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>5-6-2010</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to RCE

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114.

Applicant's submission filed on 5/6/2010 has been entered.

Claims 1, 2, 5-7, 9, 11-14, 20, 22-28 have been amended. Claims 15-19 have been cancelled.

Applicant amended claims 2, 5-7, 9, 14, 20, and 22-27 to now being in independent form, as indicated in the previous Office Action as having allowable subject matter.

Applicant amended claims 1 & 12, now requiring the first & second **unitary style** garments.

Applicant amended claim 13 to now being in independent form (incorporated the base limitations of claim 12 & dependent claim 13).

Claims 5, 9, 20, 22-27 indicated in the previous Office Action as allowable, however, claim 5 has been regrettably withdrawn in view of the newly founded reference applied in the rejection below.

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Response to Arguments

Regarding claims independent 1 & 12, as amended, applicant argued that the Clement reference applied in the previous Office Action does not disclose the first & second garments (11, 12) are of elasticized. Such remarks haven carefully considered and deemed persuasive, in particular, the first garment (11) and the second garment (12) are not formed of elasticized. As such, the Clement reference has been withdrawn.

The claims, as amended, have been carefully considered but deemed not allowable in view of the following rejection(s).

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 24-25 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Regarding claims 24-25, the specification does not disclose each of the elasticized pieces comprises **knitted** fabric. Page 6 line 5 in the specification discloses each of the elasticized pieces comprises **woven** fabric. See also original claim 9.

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Regarding claim 24, the specification does not disclose the outwardly facing surface of each of the garments comprises **knitted** fabric. Page 6 line 3 in the specification discloses the outwardly facing surface of each of the garments may comprise a **woven** fabric. See also original claim 9.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 2, 4-7, 9, 12-14, and 20-27 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. Specifically, these claims recite **a plurality of elasticized pieces** and that the first elasticized piece is applied against either to both garments or to one of the garments but it is unclear how the non-first elasticized piece(s) is related to the garment(s). Therefore, the omitted structural cooperative relationships are: the non-first elasticized to the garment(s).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 10-13, 20-22, and 26-28 are rejected under 35 U.S.C. 102(b) as being anticipated by Daoud et al (U.S. Patent No. 5,144,694).

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Daoud et al discloses 1-3 a therapeutic garment system comprising an elasticized wrap-around first & second unitary garments (10, 12), each of the unitary garments (10, 12) comprising an outwardly facing surface having an area of loop material (62, 88).

Daoud et al further discloses a spine strap (14) having an area of releasable fastener (106) releasably applied against the area of loop material (62, 88) of the first & second garments (10, 12), see column 10 lines 13-16, thereby, interconnects the spine strap (14) with the garments (10, 12) in an operative therapeutic configuration.

Regarding claims 1, 12, 13, 20, 22-23, 26 reciting **a plurality of separate elasticized pieces**, the Daoud et al reference discloses a spine strap (14) having an area of releasable fastener (106) for engaging the spine strap (14) onto loop material (62) of first garment. In addition, Daoud et al reference discloses a similar strap may be secured to the second garment (12) along the left or right leg using similar fastening means as presented with respect to the spine strap (14), see column 10 lines 36-43). These two straps rendering **a plurality of separate elasticized pieces**, thereby, meeting such limitations in claims 1 & 12.

Regarding claims 13, 21, and 28 reciting the first & second garments donning on specific body area, Figures 1-2 in the Daoud et al reference illustrates the first garment (10) is of an upper torso garment and the second garment (12) is of an upper leg cuff.

Regarding claim 10, the operative therapeutic configuration clearly would improve movement control of the body.

Regarding claim 11, reciting a device of a weight pack, Figures 4-8 in the Daouds et al reference illustrates weight packs.

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Regarding claim 20, Figures 1-2 illustrates the garments (10, 12) are overlapping one another. Da ouds et al reference discloses a 2nd strap similar to that of the first spine strap (14), the 2nd similar strap may be secured to the second garment (12) along the left or right leg using similar fastening means as presented with respect to the spine strap (14). With this in mind, the 2nd similar strap would partially overlapping with the spine strap (14).

Regarding the 2nd wherein statement in claim 22 requiring no space exists between the garments, Figures 1-2 illustrates the garments (10, 12) have no space therebetween when worn.

Regarding claim 26, the area of releasable fasteners of the first elasticized piece (14) comprises 2 regions.

Regarding claim 27, the spine trap (14) is capable of being applied on to the Da ouds et al garment system such that the first region of the strap (14) is applied on the first garment (10) & the region of the strap (14) is applied on the second garment (12).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5 & 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Da oud et al (U.S. Patent No. 5,144,694) and further in view of Bracken (U.S. Patent No. 5,561,932).

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Daoud et al discloses 1-3 a therapeutic garment system comprising an elasticized wrap-around first & second unitary garments (10, 12), each of the unitary garments (10, 12) comprising an outwardly facing surface having an area of loop material (62, 88).

Daoud et al further discloses a spine strap (14) having an area of releasable fastener (106) releasably applied against the area of loop material (62, 88) of the first & second garments (10, 12), see column 10 lines 13-16, thereby, interconnects the spine strap (14) with the garments (10, 12) in an operative therapeutic configuration.

Regarding claim 23 reciting the releasable fasteners of an area of tiny flexible hooks & loops, Daoud et al discloses the releasable fasteners are of loops & hooks (see column 10 lines 13-16).

Regarding the 2nd wherein statement in claim 5 & claim 23 reciting a size-tailoring indicia, Figures 1-2 in the Daoud et al reference illustrates the second garment (12) is a lower torso garment, of which comprises all of the elements as recited in the wherein statement except for the size-tailoring indicia extending along the thigh portion thereof.

Bracken discloses a lower garment (24) comprises a waist portion (34) interconnected with the thigh portion with size-tailoring indicia (10) extending along thereof.

Therefore, it would have been obvious to one skilled in the art to modify the Daoud et al's lower torso garment (12) such that includes a size-tailoring indicia, taught by Bracken, for purposes of providing the proper size selection of the garment.

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Claims 9 & 24-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Daoud et al (U.S. Patent No. 5,144,694) and further in view of Phillips, Sr. et al (U.S. Patent No. 4,843,647).

Daoud et al discloses a therapeutic garment system comprising an elasticized wrap-around first & second unitary garments (10, 12), each of the unitary garments (10,12) comprising an outwardly facing surface having an area of loop material (62, 88).

Daoud et al further discloses a spine strap (14) having an area of releasable fastener (106) releasably applied against the area of loop material (62, 88) of the first & second garments (10, 12), see column 10 lines 13-16, thereby, interconnects the spine strap (14) with the garments (10, 12) in an operative therapeutic configuration.

Daoud et al further discloses the areas of releasable fasteners are of hooks & loop engagements (62, 88, 106), see column 10 lines 13-21.

The Daoud et al reference does not disclose the specific material of each of the garments, Phillips, Sr. et al discloses garment system comprising an upper torso garment (10), a lower torso garment (11), and a plurality of elasticized pieces (12, 13, 34) and fasteners (41) releasably applied to the garments (10, 11).

Phillips, Sr. et al discloses the outwardly facing surface of the garments comprises a woven fabric & the under layer comprises a polyester-polyurethane foam, the Phillips, Sr. et al reference teaches the construction of its garment system includes an outermost woven fabric layer (16) and an under polyurethane layer (17).

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Therefore, it would have been obvious to one skilled in the art to construct the Daoud et al's garment system using the material taught by Phillips, Sr., as such would provide comfort & durability.

Allowable Subject Matter

Claims 2-4, 6-8, and 14 are allowed if applicant address & overcome the 112 rejections presented above.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Camtu T. Nguyen whose telephone number is 571-272-4799. The examiner can normally be reached on (M-F) 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on 571-272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Camtu T. Nguyen/

Examiner, Art Unit 3772

/Tatyana Zalukaeva/

Supervisory Patent Examiner, Art Unit 3761